



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Civil Appeal 991 of 2007**

**SAMUEL UIRU**

**SAVANI PRAMOD**

V.....AP

**PELLANT**

**SAVANIS BOOKSHOP CENTRE LTD**

**VERSUS**

**JOHN OCHIENG MURIONGO (Suing as Legal Representative of Late Joseph  
Ochieng.....APPLICANT/RESPONDENT**

**R U L I N G**

The application before the court is the Notice of Motion dated 27<sup>th</sup> March, 2012. It seeks dismissal of this appeal for want of prosecution and thereupon an order for release of deposited funds in court to, the Applicants/Respondents.

The appeal was filed on 3<sup>rd</sup> December, 2007. The Appellant have thereafter never filed a record of appeal. Nor have they taken any action to mature the appeal to a hearing. However, on 4<sup>th</sup> December, 2007 the Appellant sought and obtained a conditional order of stay pending the determination of the appeal. The condition was that the Appellant was to pay to the decree-holder-respondent 50% of the decretal amount. The Appellant apparently complied with the order. Since then, however, the file record shows that the Appellant did nothing more.

In their replying affidavit to this application however, the Appellants argued that they could not compile the record of appeal nor take any other step to advance the appeal because the lower court has never given them the typed proceedings and judgment and decree, despite their several requests for the same. They referred to their five such requests, the latest one being the one dated 27<sup>th</sup> November, 2007. They further argued, on similar grounds, that they were unable to fix the appeal for directions. They finally submitted that there is nothing else they could do to advance the disposal of the appeal until the court supplies the necessary documents above mentioned, which is a situation beyond their control.

I have carefully perused and considered the material in support and against this application to dismiss. I have no doubt in my mind that the Appellant could have taken successful steps to bring this appeal to a hearing and final determination. Since November, 2007 when the Appellants wrote the last letter, they, or their advocate could have personally approached the Executive Officer of the lower court to follow up on the matter. They have not deponed to that end. The lower court file record was received in the High Court on 8<sup>th</sup> March, 2012 but the Appellants are not shown to have sought assistance from the Deputy Registrar. On the other hand, the Appellant's counsel could, have through a formal application or even an oral one, have sought help from the court, to obtain the required proceedings. They did nothing or little to that end.

The impression given to the court by the Appellants is that the appeal can never be brought to a hearing unless the court responds to the Appellant's letter dated November, 2007. In the court's view, such a stand is not right and suggests indolence on the part of the Appellant.

It is also probable that the Appellants intention is not to bring this appeal to a final disposal on whatever grounds in their mind. There is existing stay of execution order on record in the applicant's favour and the same must have, given them the assurance that there will be no harm that can come their way in terms of execution.

In the above circumstances this court takes the view and finds that the application to dismiss the appeal for want of prosecution is justified. Even under the provisions of Sections 1A and 1B of the Civil Procedure Act, the Appellants do not deserve any further favourable discretion as those provisions require parties to efficiently and expeditiously dispose of their suits.

In the circumstances, this court grants the prayers in this application. The appeal is hereby dismissed for want of prosecution with costs here and below. If there are any funds still deposited in court or elsewhere, the same shall be forthwith released to the decree-holder/respondent. Orders accordingly.

Dated and delivered at Nairobi this 23rd day of November, 2012.

**D A ONYANCHA**  
**JUDGE**